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Choctaw nation.

MEMORIAL OF CHOCTAW INDIANS.

Mr. OWEN presented the following

MEMORIAL OF THE CHOCTAW INDIANS AGAINST REOPENING THE CHOCTAW AND CHICKASAW ROLLS.

FEBRUARY 18, 1909.—Referred to the Committee on Indian Affairs and ordered to be printed.

A PROTEST OF THE CHOCTAW INDIANS AGAINST REOPENING THE CHOCTAW AND CHICKASAW ROLLS.

The President, the Congress of the United States, and the Secretary of the Interior:

The Choctaw Indians, through their general council, in regular session assembled, desire to enter their protest against reopening the Choctaw and Chickasaw tribal citizenship rolls, and for reasons would respectfully state that:

Experience has proved abundantly that a great mistake was made when, by the act of Congress approved June 10, 1896, the Government of the United States assumed jurisdiction in the Indian citizenship matters. Theretofore the settlement of such matters was left largely to the tribes, and under the tribal jurisdiction no person was denied or refused enrollment who was entitled to the rights of Indian citizenship, and very few were enrolled by the tribes who were not entitled to rights of citizenship. The correctness of the rolls prepared by the tribes, as well as the integrity of the same, is vouched for by Congress itself, when by the said act of June 10, 1896, it was provided:

> That the rolls of citizenship of the several tribes as now existing are hereby confirmed.

Had Congress stopped at the confirmation of the tribal rolls as then existing, or left the further determination of citizenship matters to the tribes themselves, where it properly belonged, the rolls would have been made and closed long ago, with no expense to the Government and with comparatively little cost to the tribes. Furthermore, had the tribes been left to judge of the rights of citizenship of their own members, the great horde of fraudulent claimants that besieged the courts and the commission would have been unheard of, for they and their attorneys would have well known that it was utterly useless to try to prove any rights before the tribal authorities with the kind and character of evidence that they imposed upon the commission and

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the courts; consequently they never would have tried it. And the Choctaw and Chickasaw tribes would not have been forced to the necessity of paying out over a million dollars in fees and expenses to prevent fraud upon their rolls, nor would the Government of the United States have been put to the expense of hundreds of thousands of dollars in providing courts and commissions for the trial of cases that were absolutely without merit.

When by the act of June 10, 1896, the Dawes Commission was authorized and directed "to proceed at once to hear and determine the application of all persons who may apply to them for citizenship in any of said nations," it was as if the flood gates had been lifted. The direction of the commission "to hear and determine the application of all persons who may apply" was taken by the numerous applicants to be an invitation, it seems, to "all persons" to apply for citizenship in one or the other of the nations; at least a great many persons applied to the Dawes Commission for citizenship in the tribes who had never before claimed or thought they were Indians. Applicants simply saw what they thought to be an opportunity or chance to get on the tribal rolls and get a part of the Indian lands and moneys with very little cost or expense to themselves, for there were plenty of attorneys then, as there are now, who were willing to file applications for the applicants for a nominal charge, then take the cases for a contingent fee of a part of the lands and other property which the applicants expected to get if enrolled.

The laxity of the law in the matter of proof required and permitted in citizenship cases was in a large measure responsible, though unintentional of course, for the loose and disreputable practice that grew up under it. The provision of said act of June 10, 1896, that the commission should have power and authority to receive "affidavits and other evidence in any form whatsoever" theretofore taken where the witnesses giving said testimony had since died or were then residing beyond the limits of said Territory, gave to the applicants and their attorneys the opportunity that many of them wanted—an opportunity to get a lot of fraudulent testimony before the commission by affidavits. The opportunity to introduce false and fraudulent testimony was not neglected by many of the applicants and their attorneys, as is shown by the files and records now in the possession of the Commissioner to the Five Civilized Tribes, including the records and files of the courts.

It is a fact which can not, and should not, be concealed or disguised that the applicants and their attorneys in Indian citizenship cases practiced upon both the tribes and the courts the most glaring frauds known to the history of legal controversy; this they did in the way of bribery, perjury, and subornation of perjury, and in the most instances it was done by the active aid and procurement of attorneys who had contingent fees in such cases.

When the tribal rolls were thrown open to the public, so to speak, by the said act of June 10, 1896, the commission was almost overwhelmed with applications for Indian citizenship from almost everywhere; and as the law required that the commission should decide all such applications within ninety days after the same were made, it was an absolute physical impossibility for the Indian tribes to resist all the numerous cases, or any considerable portion of them, in so brief a time. The difficulties of the situation for the tribes were increased by the

provision already referred to permitting the applicants to submit proof by affidavit. There was no way of meeting that kind of proof within the limited time allowed for the consideration and trial of each case. Therefore the tribes were practically helpless before the tremendous onrush of the thousands of fraudulent applicants who were trying to get on the Indian rolls.

But with all their eagerness to get on the rolls and get a part of the property of the Indians, then about to be divided, and with all their reckless methods and manner of getting up proof, the applicants and their attorneys failed to convince the commission that the applicants were Indians and entitled to enrollment, and the result was that most of the applicants were rejected by the Dawes Commission. But this was not the end.

Said act of June 10, 1896, provided for an appeal from the decision of the Commission to the Five Civilized Tribes to the United States court, and the applicants practically all appealed their cases to the courts sitting in their respective districts. Contrary to the expectation of the tribes, and contrary to the law as was afterwards judicially determined, the cases appealed from the Dawes Commission were tried anew in the United States court and the applicants were allowed to introduce new evidence in the trial of appeal cases. Having failed utterly in their proof before the Dawes Commission, the applicants and their attorneys set out to get some other and different proof for the trial of their cases in the courts.

Again the tribes found themselves unprepared and unable to contest the thousands of citizenship cases that were pressing for trial in the courts on account of the introduction of new testimony allowed by the courts, and already the business before the courts was of sufficient volume to tax their capacity to the utmost limits, and when the thousands of citizenship cases were added to the dockets it was impossible for the courts to give to them the attention they should have had. Under the press of business the courts referred the citizenship cases to special masters to take testimony, make their findings, and report; and it is a fact, now too well known for dispute, that many of those special masters were themselves attorneys in citizenship cases of the same kind that were coming before them for hearing and recommendation.

It is no surprise then, that fraudulent and other improper evidence was received by many of the special masters in support of the claims of the applicants for Indian citizenship. The tribes being unprepared at that time to attack and show up the great mass of fraudulent testimony of the applicants, and the courts not having the necessary time at their disposal to investigate the cases and the reports of the special masters in a way that should have been done, said reports of the special masters were approved and judgment went against the tribe almost as of default.

Not content with having procured judgments by the use of perjured testimony and the practice of fraud of every other kind and description, there are cases of record where the attorneys or others interested in the citizenship cases interpolated names of persons in the judgments who were not parties to the suits at all. It is true these names upon being called to the attention of the court were stricken from the judgments, but the practice of this and other fraud by the applicants and

their attorneys serves to show the viciousness of the times when people would perjure their very souls to get on the tribal rolls in an effort to get a part of the land and money belonging to the Indians.

The fraud of the applicants and their attorneys became so notorious as to attract universal attention and excite the contempt of honest and decent people everywhere. The Choctaws and Chickasaws appealed to the authorities at Washington to protect their rolls against fraud. An appeal was made to the Secretary of the Interior to disapprove the enrollment of the fraudulent applicants, and he answered that he was without power and authority to disregard the judgments of the courts. The tribes turned to Congress for relief and were told that it was not within the power of Congress to disturb the judgments of courts of competent jurisdiction by legislative act. Then the tribes asked for a review of the judgments of the courts admitting fraudulent applicants to Indian citizenship, upon the following grounds:

1. That the United States district courts in the Indian Territory had admitted applicants to citizenship in the Choctaw and Chickasaw nations without notice to both of said tribes, and as said Choctaw and Chickasaw tribes jointly owned the property sought to be affected by said judgments, notice to both of said tribes was necessary.

2. That in the trial of said cases by the courts on appeal from the Dawes Commission the proceedings in the courts should have been confined to a review of the action of the commission upon the papers and evidence submitted to the commission and should not have extended to a trial de novo of the question of citizenship.

The request of the Choctaw and Chickasaw tribes for a review of the judgments of the United States courts admitting applicants to citizenship was made in the form of an agreement (known as the Choctaw-Chickasaw supplementary agreement, act of Congress approved July 1, 1902) entered into between the Dawes Commission, representing the United States Government, and the representatives of the Choctaw and Chickasaw tribes. Congress seeing the force of the contention against the validity of the judgments, and perceiving the justness of the claims of the tribes, was not disposed to ignore the same, but favored the provision for a review of said judgments upon the two legal questions submitted. The applicants and their attorneys became very much alarmed, for they, too, realized the legal infirmities of the judgments under which they claimed rights of Indian citizenship. And not only did the applicants and their attorneys fear that upon attack in the courts their citizenship judgments would be declared void and of no effect, but they well knew the truth of the charges of fraud made against them by the tribes. Applicants accordingly sent their attorneys and others posthaste to Washington to lobby against the ratification of the agreement or the passage of any bill by Congress providing for a review of their citizenship judgments. But there had been an awakening of public conscience, and the applicants and their attorneys were unable to further defeat the ends of justice and the demands of the law.

When it became apparent that Congress would ratify the agreement with the tribes providing for a judicial review of the citizenship judgments upon the law questions to be submitted, the applicants and their attorneys became apprehensive of the result; and, knowing the fraud they had practiced in securing said judgments, they at once began to plead for terms. Not only did they ask that they be given another

trial in the event the court judgments admitting them to citizenship should be declared void, as they were afraid they would be, but they begged that in the retrial of their cases the same to be considered without prejudice against them on account of any judgment or decision theretofore rendered.

In order that the applicants might have the fullest opportunity to establish whatever rights, if any, they had under their claims to Indian citizenship, the tribes offered no objection to the provision giving them another trial in the event of their former judgments being declared void, although, under the circumstances, the tribes would have been entitled to final judgment. However, the agreement between the Government and the Choctaw and Chickasaw tribes, as ratified by Congress, contained the following provision, which gave to the applicants every reasonable opportunity in the world that they could ask for to prove up their rights, if any they had, to Indian citizenship:

> In the event said citizenship judgments or decisions are annulled or vacated in the test suit hereinbefore authorized, because of either or both of the irregularities claimed and insisted upon by said nations as aforesaid, then the files, papers, and proceedings in any citizenship case in which the judgment or decision is so annulled or vacated, shall, upon written application therefor, made within ninety days thereafter by any party thereto who is thus deprived of a favorable judgment upon his claimed citizenship, be transferred and certified to said citizenship court by the court having the custody and control of such files, papers, and proceedings, and, upon the filing in such citizenship court of the files, papers, and proceedings in any such citizenship case, accompanied by due proof that notice in writing of the transfer and certification thereof has been given to the chief executive officer of each of said nations, said citizenship case shall be docketed in said citizenship court, and such proceedings shall be had therein in that court as ought to have been had in the court to which the same was taken on appeal from the Commission to the Five Civilized Tribes, and as if no judgment or decision had been rendered therein.

It will be seen therefore that not only was Congress extremely liberal in the laws that it passed relating to Indian citizenship matters, but the Indian tribes were willing, as is shown by their agreements with the Government, that applicants should be offered every legitimate means known to the law of establishing their rights, if any they had, to Indian citizenship, the tribes insisting only that applicants must prove their rights, if any, by truthful and legal evidence.

Upon the presentation to the citizenship court of the two test questions submitted to it by said act of Congress approved July 1, 1902, the applicants amassed their force of attorneys before said court and made a vigorous but unsuccessful effort to sustain the validity of their citizenship judgments. After full hearing, given to both sides, and after mature deliberation by the court, the questions submitted and argued were decided in favor of the tribes by a unanimous opinion of the court, and the citizenship judgments of applicants held to be void for the two irregularities complained of and hereinbefore referred to.

The victory of the tribes, though just and merited as it was, did not prevent the applicants from having a further trial of their cases on their merits without prejudice, for it was provided, as hereinbefore stated, that in the event the test questions should be decided against the validity of the judgments held by the applicants, then the applicants should have a right to come before the citizenship court and have their cases tried upon the facts "as if no judgment or decision had been rendered therein." This they did.

There was a notable difference, however, between the trial of the citizenship cases before the citizenship court and the trial of the same

cases before the district courts. Here the tribes were prepared and ready for trial and no cases were tried or decided on ex parte proof. In the trial of these cases before the citizenship court no special masters with interest, direct or indirect, in the outcome of the cases, were trusted or permitted to take testimony of the witnesses, as the law required that all such testimony must be taken before the court or one of the judges of said court. It was a fair field and no favorites. While the taking of testimony was surrounded by every safeguard and protection against perjury and fraud of every kind that the law could devise, the court was disposed to let in all the testimony on both sides that could reasonably be admitted under the law and rules of evidence, thereby giving to each side all opportunity to develop the full strength of their respective sides of the case.

The time and attention of the Choctaw and Chickasaw citizenship court were devoted exclusively to the consideration of Choctaw and Chickasaw citizenship cases. The court was authorized by law to permit either party "to take and present such further evidence as may be necessary to enable said court to determine the very right of the controversy." The provision of the law requiring the testimony to "be taken in court or before one of the judges" necessitated some one of the members of the court visiting Mississippi, Virginia, and other States for the accommodation of the applicants to take the testimony of witnesses in their behalf. In every way possible did the law afford to the applicants a fair chance to prove their claims to Indian citizenship. The applicants availed themselves of the opportunities of the law, they came into court, submitted their proof, tried their cases at great length, and were shown every courtesy and consideration due them or that would have been due any litigant under the law. Indeed, so much time was given to the trial and consideration of applicants' citizenship cases that it became necessary for Congress to extend the existence of the court one year beyond the time originally provided by law.

The cases were, each of them, decided upon the evidence and the merits and not upon the recommendation of special masters who were themselves attorneys in citizenship cases, and we submit that the record in each case will show a fair, impartial, and correct decision. The records are in existence, and we challenge the applicants and their representatives to produce the records in a single case and show by said records that the decision against them was not a correct decision.

The result of the Choctaw and Chickasaw citizenship court's decisions, after a tedious trial of each case and careful consideration of all the proof therein, was the admission of something like 150 of the applicants and the rejection of over 3,000 of them.

Thus ended, so far as the actual adjudication of citizenship cases was concerned, a struggle covering a period of nearly ten years at the cost of hundreds of thousands of dollars to the United States Government for courts and commissions to try the claims to Indian citizenship, and at a cost of over $1,000,000 to the Choctaw and Chickasaw tribes to prevent the enrollment of fraudulent applicants.

Now, we respectfully submit that the applicants have had their day in court, and the sum total of the proof introduced by them, to say nothing of the rebuttal testimony offered by the tribes, shows conclusively that they are not Choctaw or Chickasaw Indians, and have no rights as such. Therefore they are not entitled to further consideration in the matter of their claims to Indian citizenship by either Congress or the courts.

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We further respectfully submit that the record made by many of the applicants and their attorneys in the trial of their cases before the Dawes Commission and the United States courts shows them to be unworthy the consideration that has already been shown them by Congress; that the opportunities afforded them by law to make proof of their claims to citizenship in the tribes were in many instances abused by the applicants and their attorneys in such a way as to destroy all confidence in them or their claims.

For these and other reasons appearing in the record we earnestly appeal to the authorities of the United States Government not to reopen the Choctaw and Chickasaw citizenship rolls, but to protect the same against the fraud of applicants, their attorneys and representatives.

It is true that the applicants and their attorneys charge fraud against the citizenship court, and allege irregularities on the part of the Dawes Commission in some cases, but they are wholly unable to support such charges by proof of any kind, as has been demonstrated by their unsuccessful efforts before the committees of Congress and before the United States court for the eastern district of Oklahoma. Applicants do not attempt to charge that injustice was done them in the decision of the citizenship court upon the record; they do not refer to the evidence before that court in a single case; they simply seek to discredit the court by slanderous charges that they are unable to prove. It is safe to say that applicants and their attorneys would complain against and malign any tribunal that might decide against them, it matters not what the proof would show.

It is our belief that many of the false claims to Choctaw and Chickasaw citizenship are inspired by enterprising attorneys who encourage applicants to persist in their efforts before Congress and elsewhere to get on the rolls, in the hope that they will get a fee of a part of the lands and other property that would come to the applicants in the event of their enrollment. The attorneys, so called, but who are lobbyists first and attorneys afterwards, will undertake to have an applicant enrolled as a Choctaw or Chickasaw Indian for a contingent fee of one-half of the property such applicant would get if enrolled.

A favorite plan of some of the attorneys who are engaged in this nefarious business is to present to Senators, Members of Congress, and officials of the Government persons of dark complexions and claim to be Choctaw and Chickasaw Indians who were left off the tribal rolls, when, as a matter of fact, many of them are not Indians at all, but are Creoles, Dagoes, Mexicans, etc.; and those who may be Indians, if any, are not Choctaws or Chickasaws, but belong to some tribe having no connection whatever with the Choctaw or Chickasaw tribes. It must be remembered that all Indians are not Choctaws and Chickasaws. Such practice as that is a base deception and a fraud upon Congress and the Government, as well as upon the tribes, and deserves to be rebuked severely.

We believe that there are some few scattering Choctaws and Chickasaws who were left off the tribal rolls by mistake as a result of their own ignorance in failing to apply, and possibly some few others whose names were stricken from the rolls by mistake, but in all they will not number more than forty or fifty persons, and they have no connection whatever with the class of fraudulent applicants and imposters that are being represented by attorneys and lobbyists at Washington, except, perhaps, that the few isolated instances of this kind may be

improperly referred to by such lobbyists in an effort to influence legislation in behalf of their thousands of undeserving clients.

We believe, however, that the few real Indians who may have been left off the rolls by mistake are ascertainable from the records in the possession of the Commissioner to the Five Civilized Tribes, and we believe that a recommendation from Mr. Wright, the commissioner, as to how these few persons should be cared for in the matter of enrollment would offer a safe and correct solution of the problem.

We conclude, therefore, with the humble petition and earnest prayer to the President, the Congress of the United States, and the Secretary of the Interior that the rolls and property of the Choctaw and Chickasaw Indians be not again exposed to the fraud and graft of fraudulent claimants, their attorneys and lobbying representatives.

Proposed by J. L. Ward, chairman of the committee on the chief's message.

Read, interpreted, passed the senate, and referred to the lower house on this the 13th day of October, 1908.

G. W. CHOATE,
President of the Senate.

Attest:

C. A. HURD,
Recording Secretary.

Read and interpreted, passed the house, and referred to the principal chief this the 13th day of October, 1908.

E. A. MOORE,
Speaker pro tem of the House.

Attest:

W. H. ISHERWOOD,
Recording Secretary.

Approved this the 14th day of October, 1908.

GREEN MCCURTAIN,
Principal Chief Choctaw Nation.

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